

**Before the
Federal Communications Commission
Washington DC 20554**

In the Matter of)	
)	
Comprehensive Review of Universal Service Fund)	WC Docket No. 05-195
Management, Administration, and Oversight)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

Comments from the Wisconsin Department of Public Instruction
(Filed October 18, 2005)

The Wisconsin Department of Public Instruction (department) appreciates the opportunity to comment on this important Order released by the Commission on June 14, 2005. Our comments focus on the Schools and Libraries Universal Service Support Mechanism, more commonly known as the E-rate program. We believe the Commission is serious about addressing the systemic problems in the E-rate program. Minor changes around the edges of the program will not resolve its core problem: a Byzantine application and discount/payment process tied to an onerous application review process.

Issues with the E-rate notwithstanding, the department is a strong supporter of the program and Wisconsin schools and libraries have received \$204 million in discounts since the program's inception. We have commented on many previous FCC Orders related to this program, including the first FCC Order in 1996 (CC Docket No. 96-45, see http://dpi.wi.gov/pld/fcc_let.html). Our staff are active in the State E-rate Coordinators' Alliance (SECA) and the American Library Association's (ALA) E-rate Task Force. SECA and ALA represent state E-rate coordinators who work in state education and state library agencies and directly assist applicants.

We have elected to comment only on those issues we believe are of most importance to Wisconsin schools and libraries. In general, we support the more extensive comments filed by SECA and the ALA. *The department requests the Commission to scrutinize closely the many positive recommendations made by these two organizations. Their ideas on fundamental reform of the program and application process deserve serious consideration. These two organizations have the closest direct relationship to applicants.*

Introduction

In March 2002, the Wisconsin Department of Public Instruction submitted comments to the FCC as part of the NPRM “Schools and Libraries Universal Service Support Mechanism” adopted January 16, 2002, released January 25, 2002. We believe the opening section of our comments from over three years ago is as relevant today as it was in March 2002:

The background section of the NPRM states, “Oversight of such a far-reaching program is necessarily intensive and complex.” We disagree. It does not, necessarily, have to be this way. But through a myriad of complex rules coupled with a seemingly endless program cycle implementation process, the FCC and the Schools and Libraries Division (SLD) have created a complex program that results in an equally intense and complex oversight process. This complexity leads to applicant frustration and higher-than-necessary administrative costs and is certainly a factor in any program waste, fraud, and abuse. *The prevailing theme in our response is to simplify and streamline the program in all aspects.*

In general, our position in October 2005 is the same as in March 2002. The prevailing theme in this filing is to *simplify and streamline the program in all aspects*. We believe that our suggestions, along with those filed by SECA and ALA, can help the Commission reform the program to benefit all parties.

A. Management and Administration of the USF

Paragraph 12: Administrative Structure

The FCC asks if it “should replace the permanent, designated Administrator with another type of administrative structure or entity.” While we have had issues with the current program administrator, we believe that changing the administrator without addressing the fundamental structural problems in the program itself will not resolve anything. In fact, it could make the situation worse, because a new administrator would need many months, if not years, to become familiar with the program. It is the dysfunctional nature of the program that is the core problem. No changes in the administrator, without addressing this core problem, will resolve anything.

Paragraph 15: USAC Board and Committee Structure

For the E-rate program we believe that establishing an Applicant Advisory Group would be very useful. The current board does not have enough members who have day-to-day experience with this program. An advisory group, made up of state E-rate coordinators and school and library staff who are responsible for the E-rate in their respective institutions, could provide very helpful “real world” advice to the Commission.

Paragraph 21: Interfund Borrowing

The department believes that the Commission should review this issue in light of the Anti-Deficiency Act. Should legislation (H.R. 2533) not pass, or pass with a limited time exemption, then interfund borrowing may help prevent situations like the funding moratorium of August to December 2004.

Paragraphs 24-29: Performance Measures

Since the statutory goal of the E-rate program is to provide discounts on telecommunication services, Internet access, and internal connections for eligible schools and libraries, the

department believes that the most useful and valid measure is the number of eligible applicants served and their level of participation. The number of schools and libraries participating can be relatively easy to measure. Whether applicants are maximizing their discounts is more difficult, but an important factor to know. For example, what percentage, or number of participants, do not apply for Priority Two discounts because of insufficient funds? (In a typical program year, 98% of Wisconsin's school districts and public libraries *do not* qualify for Priority Two discounts.)

The department believes that considerable data on Internet connectivity already exists. For example, the study *Public Libraries & the Internet* (<http://www.ii.fsu.edu/plinternet>) was just released in August 2005. It has considerable information on Internet connectivity in the nation's public libraries. The National Center for Educational Statistics collects similar data for schools. The Center's report *Internet Access in U.S. Public Schools and Classrooms: 1994–2003* was also released this year (<http://nces.ed.gov/surveys/frss/publications/2005015/>). In trying to identify schools or libraries with no broadband access or no connectivity at all, the FCC should work with the state education and library agencies that have information on school and library connectivity in their respective states. The E-rate is a key program in fulfilling the FCC's broadband initiative. All schools and libraries should have broadband connectivity at speeds they need.

The department does not believe there is any easy or reasonable way to distinguish use of E-rate funds from the benefits of other programs that support similar services or facilities. Nor is there a need to document such a distinction; that is outside the statutory goal of the program.

Paragraphs 32-33: Program Management

The FCC seeks comment on whether the E-rate distribution processes should more closely track those of the High Cost and Low Income programs. In our March 2002 filing, the Wisconsin Department of Public Instruction stated:

From a customer's perspective, the Universal Service Administrative Company's (USAC) other two programs, the High Cost and Low Income programs, are not nearly as complex as the E-rate program. In the High Cost program no customer has to complete several forms each year to get a phone bill discount, no customer has to submit copies of monthly bills to any agency, no customer is ever denied a discount, and no customer is ever contacted by program staff, at times to the point of harassment, regarding their discount. In brief, customers in high cost areas do nothing and yet they still receive a discount on their telephone bills. If USAC's two other programs can provide discounts to millions of customers with little or no action needed by the customers, why can't a similar process be applied to thousands of schools and libraries to get discounts on their telephone bills through the E-rate? If the E-rate were modeled more closely on these other USAC programs there would be no applicant waste, fraud, or abuse, and with a much more streamlined and rational application process, more schools and libraries would apply. To those who say that some services, like a phone line to a school bus barn, are not eligible under current E-rate rules, we say *change the rules*. In summary, we challenge the FCC to find a way to make something as simple as POTS simple for applicants to apply for, too.

Our challenge above still stands.

The Commission mentions using a "formulaic approach" to distribute funds. The department has some concerns on how this would work and believes that fundamental reforms are possible within the E-rate program without necessarily moving to some type of funding formula. In this regard, we propose the following scenario as an example of a simplified POTS application cycle for 2006.

1. By September 30, 2006, applicant submits to the SLD a one-page application that
 - a. lists the applicant's telecommunication provider(s)
 - b. lists the total annual cost for telephone service from each provider. (Cost is based on applicant's last full budget cycle, most likely July 1, 2005—June 30, 2006. Cost would be from a month-to-month billing or an existing contract.)
 - c. verifies applicant's discount percentage
2. SLD sends the applicant's claimed annual cost for telephone service to each provider for confirmation.

3. The SLD applies the applicant's discount percentage to the applicant's confirmed annual cost and sends a check for this amount to the applicant within 45 days of the application.

In relation to this simplified application, note the following:

- POTS is still a regulated service. This greatly reduces chances for waste, fraud, and abuse.
- There is no bidding process; the current Form 470 has seldom resulted in any competitive bids for POTS. (The High Cost and Low Income program do not require their beneficiaries to bid for services.) The Commission should rely on state and local procurement procedures to replace the Form 470.
- Most other E-rate forms are eliminated (e.g., 472, 486).
- Discounts go directly from the SLD to the applicant. (The applicant pays the full cost for services to the provider and is reimbursed by the SLD, after the fact. The initial intent of the E-rate, that it be a discount program, is fiction for a great majority of applicants.)
- All costs on the applicant's bill for services provided by a common carrier should be eligible for discounts. Currently, applicants often spend many frustrating hours in contact with PIA reviewers trying to reconcile which services are eligible and which are ineligible. This is absurd. An article in the August 27, 2005, *New York Times* stated, "For many Americans, figuring out the monthly phone bill has become the consumer's equivalent of deciphering hieroglyphics, with baffling new fees creating a thicket of items at the bottom of the bill."¹ For schools and libraries, which often have monthly bills running more than 50 pages, this task is equally baffling.

Paragraphs 37-39: Application process

As stated previously, the Wisconsin Department of Public Instruction supports in general, the changes to the application process outlined in comments filed by the E-rate Coordinators' Alliance (SECA) and the American Library Association (ALA). In addition, we make the

¹ "A Monthly Mystery." *The New York Times*, August 27, 2005.
(<http://proquest.umi.com/pqdweb?did=888152261&sid=1&Fmt=3&clientId=17733&RQT=309&VName=PQD>)

following recommendations or observations (some are reflected in the SECA and ALA comments).

The department strongly supports the simplification of all Priority 1 services. It is well documented that issues of waste, fraud, and abuse in the program are almost nonexistent with Priority 1 services. Therefore, there should be two application processes: (1) A greatly simplified process for Priority 1 services and (2) a more detailed process for Priority 2 services.

Technology plans should not be a federal requirement for Priority 1 services.

Telecommunications and Internet access are core services for schools and libraries. Asking for a technology plan for these services is like asking for a plan for electricity. FCC Orders and certifications related to technology plans have turned the plans into a trap snaring honest applicants and resulting in cases of applicant denial. A specific example: POTS does not require a technology plan, but CENTREX services do. This makes no sense, but applicants have been denied service because CENTREX was not referenced in their technology plan.

An applicant should only have to apply once for Priority 1 services, whether such services are covered by a contract or otherwise. In the second year and beyond, actual costs could be documented on a one-page “renewal” application, similar to the above POTS scenario.

For regulated telecommunication services, no applicants should have to send the SLD any bills and other cost information. The SLD should request any needed documentation directly from the provider. (For public institutions, all bills are public information.)

Unfortunately, many of our small schools and libraries (especially the latter) have given up on even applying for discounts. This is a sad commentary on a program that is not even competitive. The multitude of forms, combined with an onerous review process, has alienated small applicants. Sixty percent of the 387 public libraries in Wisconsin are in communities under 2,500 population. These libraries often have less than 3.0 FTEs, and the last job staff wants is to undertake the Sisyphean task of applying for the E-rate discounts.

As stated above, for all Priority 1 services, applicants should pay for the services first and get reimbursed directly from the SLD. Because of the uncertainty in getting funded and the chronic lateness when they do, many of our schools and libraries, even in less affluent communities, already budget for their telecommunications and Internet costs. Thus, timely reimbursement after the fact is not a problem. Getting vendors out of the fund transfer (via Form 472) will benefit all parties and simplify the process. Applicants should have the option to receive such funding via electronic funds transfer.

An applicant portal Website should be developed (e.g., My E-rate) with real-time up-to-date information on the status of all applications.

Prolonged delays in getting applications approved are the norm, not the exception. As a result, not only are applicants left in funding limbo for months, but most need to cope with multiple annual funding cycles simultaneously. For example, as of this NPRM filing, most Wisconsin applicants still have not received any funding commitments for the July 1, 2005, funding year so they cannot yet file their Form 486s and requisite follow-up Form 472s. Meanwhile, the SLD is telling applicants to file Form 470s for the July 1, 2006, year. And the final Form 472s for the July 1, 2004, year are due the end of October 2005. Multiple funding requests approved by the SLD at different times trigger different deadlines for different forms for different funding years. It becomes a full-time task just to track this labyrinth. (Recently, a large school district in Wisconsin was denied \$330,000 in discounts because of confusion over when Form 486s were due for which funding year. This district has an experienced E-rate coordinator.)

Paragraphs 40: Competitive Bidding

Let us be blunt: the competitive bidding envisioned by the Form 470 process is fiction for most applicants. Many applicants who have filed for Priority 1 services have never received any responses from any providers. Instead of resulting in real bids, the 470 has turned into a “gottcha” form that PIA uses to harass or refuse applicants who make honest mistakes in trying to answer all the questions on the form. As the SLD itself acknowledges, one of the leading causes of applicant denial is failure to adhere to the infamous Form 470 “28 day” waiting period.

The department proposes that the FCC stop micromanaging the local procurement process. Schools and libraries already have processes in place (e.g., state or local procurement regulations) that they use for the purchase of goods and services far exceeding their E-rate discounts. Applicants should be able to use their state/local purchasing regulations to procure services eligible for E-rate discounts. The 470 could then be eliminated.

Paragraph 40: Technology Plans

As stated above, the department does not support the requirement of a technology plan for Priority 1 services. For Priority 2, the department supports SECA's comments on harmonizing technology plans with other federal agencies. We believe that if a technology plan is accepted by the US Department of Education (USDoE) that its acceptance should suffice for other federal programs. For libraries, state library agencies should be the final arbiter of technology plans. Very rarely should any additional follow-up be needed for E-rate purposes. Currently the SLD tries to use the technology plan to assure that applicants will pay the undiscounted portion of bills and that they have the resources in place to use E-rate discounted services. By E-rate rules, a three year plan must be developed almost four years prior to its expiration date. The department believes that addition of the Item 25 certification on the Form 471 has already provided a better way to obtain this information. Specific information about funding and resources is now certified every year by an authorized person on Item 25 of the Form 471. In any streamlined Priority 2 application process, there need be merely a check box that states the applicant has a technology plan.

Paragraph 41: Forms

We have already commented that with reliance on state/local procurement regulations and with funds going directly to applicants, many of the forms can be eliminated, and the few remaining can be considerably streamlined.

Paragraph 42: Timing of Application Cycle

There must remain flexibility in the collection of lunch data. Because some large states have difficulty collecting data in October to be used in the following July's funding cycle, the department encourages the Commission to retain the "most current figure available" language. Furthermore, we support the SECA position that lunch data should be collected only every three years. The number of students eligible for free/reduced price lunch simply does not fluctuate very much from year to year. States and applicants should have the option for a three-year lunch data collection cycle.

As stated above, we believe a multiyear application cycle is very workable for Priority 1 services. This would benefit both applicants and providers.

Paragraph 43: Service Providers and Consultants

The Commission asks whether it should establish certain criteria, for example, standards of conduct, for participating service providers and consultants. We reply, No. It may be true that adopting such standards could help deter waste, fraud, and abuse. But, why impose such standards on all providers and consultants when the great majority are ethical and above board? Those intent on gaming the system will attempt it regardless of what standards are in place and regardless of how many certifications are required on the various forms.

B. Oversight of the USF

Paragraphs 69-75: Audits

As the Commission recognizes, many schools and libraries already obtain annual independent audits to comply with the Single Audit Act. When applicants obtain such audits, the department believes that the FCC should rely on them. At a minimum, there should be a baseline dollar figure at which the Commission would not normally seek its own audits. The department proposes that this figure be at least \$50,000 per applicant per funding year.

Paragraph 90: Measures to Deter Waste, Fraud, and Abuse

The Wisconsin Department of Public Instruction absolutely condemns any waste, fraud, or abuse in the E-rate program. One of the best ways to combat waste, fraud, and abuse is to reduce the maximum discount to 70%. Paying only ten cents on the dollar (the current 90% discount) invites unscrupulous parties to abuse the program. But requiring three bids, an idea the Commission floats, is simply not realistic for many applicants, especially telecommunications or Internet services. Any “three bid” rule would significantly reduce participation. The need for increased scrutiny of applicants who fail to get three bids will just perpetuate the same problems applicants now have with onerous and overbearing review of their applications.

While not directly related to issues of waste, fraud, and abuse the method for calculating poverty level for libraries has led to inequality in the program. This issue has been documented in an Ex Parte filing by the American Library Association on January 22, 2004. The Wisconsin Department of Public Instruction supports the ALA’s Ex Parte filing.

Paragraph 95: Other Actions to Reduce Waste, Fraud, and Abuse

Whether it is apparent or not, the FCC’s first line of defense against waste, fraud, and abuse is the E-rate support offered to applicants by state education and library agencies. Our department estimates that we spend \$90,000 annually on E-rate related staff services to schools and libraries in Wisconsin. *We know of no other federal program that relies so heavily on state education and library agencies but allocates \$0.00 for all their work.* In consideration of the critical but unrecognized work state coordinators do, the department suggests the FCC consider reimbursing at least some of the costs for the time and work now done by state coordinators at state expense. We suggest funding one FTE in larger states and scaling this down to .25 FTE for smaller states. Our estimate for this cost is about \$2.5 million annually, barely more than one-tenth of one percent of the program’s appropriation. Considering that the FCC is now paying far more than this to conduct applicant audits, we believe that this modest investment “up front” will more than

pay for itself in reducing waste, fraud, and abuse. In addition, it will allow states to provide more assistance directly to applicants.

Conclusion

The Wisconsin Department of Public Instruction appreciates this opportunity to offer its suggestions to simplify and streamline the E-rate. We believe that major, fundamental changes are needed in the program. Furthermore, we believe that our proposals and those of the State E-rate Coordinators' Alliance and the American Library Association address the major issues in the program and we strongly encourage the Commission to implement these proposals as soon as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony S. Evers". The signature is fluid and cursive, with a small dot at the end.

Anthony S. Evers
Deputy State Superintendent
On behalf of State Superintendent Elizabeth Burmaster